

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5163 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

BABUBHAI MITHABHAI ODD

Versus

STATE OF GUJARAT

3RD SPECIAL LAND ACQUISITION

Appearance:

MS SUBHADRA G PATEL for Petitioner

MR SJ DAVE, AGP for Respondent-State.

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 05/07/2000

ORAL JUDGEMENT

The petitioner has been detained under the provisions of Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as " the Act of 1985") by the order dated 30-3-2000, passed by the Police Commmissioner,Rajkot City, and he has been

declared as bootlegger.

2. It is now well settled that unless the activities of a person as bootlegger has disturbed the maintenance of public order, he cannot be detained under the Act. Reliance is placed on a decision of the case of Piyush Kantilal Mehta vs. Commissioner of Police, Ahmedabad & Ors. reported in AIR 1989 SC 491.

3. The petitioner/detenu challenges the order of detention on various counts. However, Ms. Subhadra Ben Patel learned advocate for the petitioner, has restricted her arguments to the point that page 43, 41, 57, 77, 79 and 113 of the documents supplied by the detaining authority to the detenu are illegible. Learned counsel for the petitioner submitted that the detenu was given the list of documents accompanying the grounds of detention on which the detaining authority relied upon for making the impugned order as stated in the grounds of detention to enable the detenu to make an effective representation to the Advisory Board as well as to the detaining authority as mentioned in the grounds of detention, but the detaining authority failed to supply legible copy of the relevant documents to the detenu which is given at page 43, 41, 57, 77, 79, 113 of the compilation, which affected the detenu's important right of making an effective representation under Article 22 (5) of the Constitution of India and, therefore, the order of detention is required to be quashed and set aside. He showed a xerox copy of the document supplied at page 43, 41, 57, 77, 79, 113 of the compilation. On perusing the documents, it appears that the documents at page 43, 41, 57, 77, 79, 113 are vital documents on which reliance is placed by the detaining authority. The documents at page 43, 41, 57, 77, 79, 113 are shown to Mr. S.J. Dave and he fairly admitted that the said documents are not legible. Learned counsel for the petitioner placed reliance on the decision in the case of *Pokhraj Bhai Sohanbhai Chandel v. District Magistrate, Surat & Ors.* 1991 (2) G.L.R. 753.

4. In view of the above position, I am of the opinion that the detaining authority failed to supply legible copy of the said relevant documents to the detenu for making an effective representation which has infringed the detenu's right under Article 22 (5) of the Constitution.

5. In the result, the petition is allowed. The impugned order of detention dated 30-3-2000 passed against the detenu is hereby quashed. The detenu Babubhai Mithabhai Odd is ordered to be set at liberty.

forthwith, if he is not required to be detained in any other case. Rule is made absolute with no order as to costs.

5-7-000 (R.P.Dholakia, J.)

*mithabhai